

Community Development Block Grant
2020 Full Certification – Webinar 6
Labor Standards

Overview

- Labor laws
- Establishing files for construction contracts
- Bid package procedures
- Bids higher than cost estimates
- Awarding contract
- Inform contractor of responsibilities
- Compliance/progress monitoring
- Payments

Federal Labor Laws

5 Statutory Provisions must follow:

- **Section 110, Chapter 69, Title 42, Housing & Community Development**
(HCD) Act of 974 (42 USC 5310)
- **Davis-Bacon Act**
(DBA) (40 U.S.C. 276A - 276A-5)
- **Contract Work Hours and Safety Standards Act**
(CWHSSA) (40 U.S.C. 327 - 333)
- **Copeland Act**
(Anti-Kickback Act) (40 U.S.C. 276c)
- **Fair Labor Standards Act of 1938, as Amended**
(29 U.S.C. 102, et. seq.)

Section 110 HCD Act

- Labors and mechanics employed by contractors/ subs paid wages not less than prevailing on similar construction as determined by US Department of Labor (DOL).
 - **Excludes** rehab construction residential properties less **than 8 units CDBG Program/**
 - **Less 12 units HOME Program.**

Davis-Bacon Compliance

Davis-Bacon Act does apply when:

- CDBG funds used in whole or in part for construction contracts **over \$2,000**;
 - Demolition activities to be followed by new construction;
 - Installation of equipment that is considered more than an incidental amount of the overall project cost

Davis-Bacon Compliance

Davis-Bacon Act does NOT apply when:

- CDBG funds used to fund non-construction “soft costs”
- CDBG funded demolition with no on-site construction

Contract Work Hours & Safety Standards Act (CWHSSA)

- Applies prime contracts valued above \$100,000
 - Work in excess of 40 hours per week and
 - Occurs on the job site
- Laborers paid rates not less than one and one-half times the basic rate of pay (overtime pay).
- **Update:** On November 2, 2015, President Obama signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. As of August 1, 2016 – the penalty associated with CWHSSA is:

Type of Violation	Statutory Citation	CFR Citation	Maximum Civil Monetary Penalty on or before 1/15/2020	Maximum Civil Monetary Penalty on or after 1/16/2020
Failure to pay laborers and mechanics at a rate not less than one and one-half times their basic rate of pay	40 USC 3702(c)	29 CFR 5.8(a) and 29 CFR 5.5(b)(2)	\$27	\$27

Computing Liquidated Damages under CWHSSA

Are computed at \$27 per day per violation:

Regular Time

S	M	T	W	TH	F	S	Total
0	10	12	13	9	8	3	55

15 weekly hours of overtime were worked on 3 calendar days (Thursday, Friday, Saturday) without payment of overtime. Liquidated damages computed at \$81.

Copeland Act (Anti-Kickback Act)

- Criminal offense for any person to induce, by any manner a laborer to give up any part of the compensation to which he/she is entitled under contract of employment.
- Requires contractors to submit weekly a “statement of compliance” certifying required wages paid.

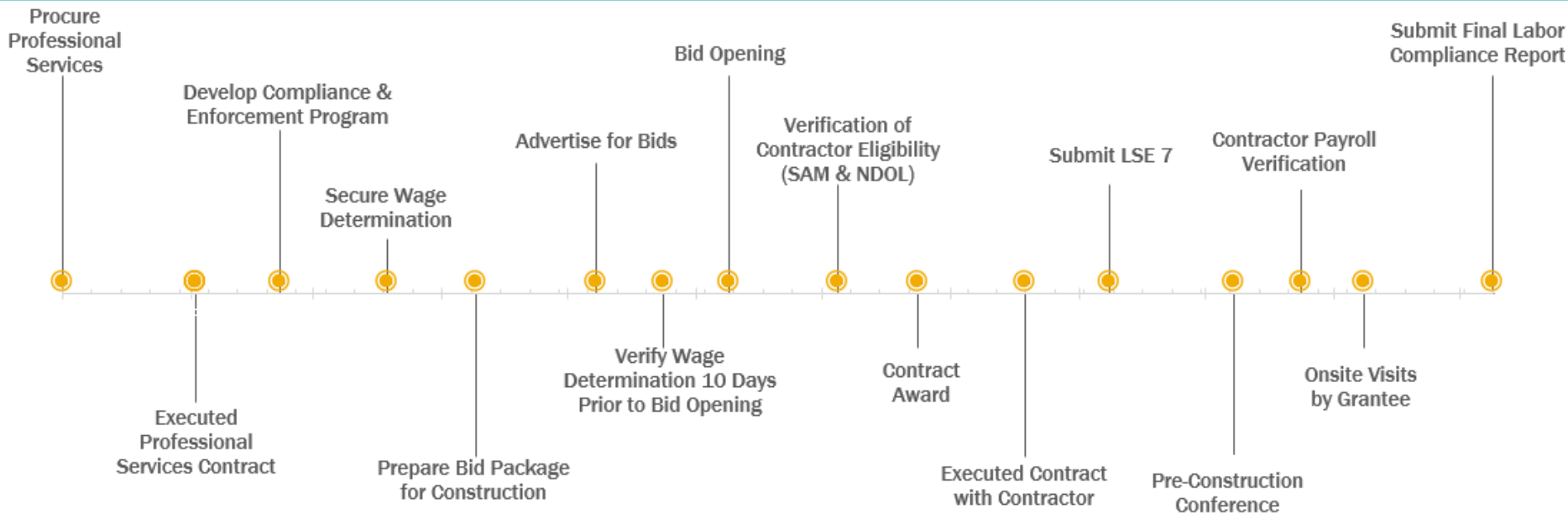
Fair Labor Standards Act of 1938, as Amended (FLSA)

- Establishes minimum wage, overtime pay (40 hour workweek), recordkeeping, and child labor standards.

Labor Standards Procedures Overview

- Develop Compliance & Enforcement Program
- Local Labor Standards Compliance Officer
- Establish Construction & Labor Standard Filing System

Timeline for Labor/Contractor Compliance Events



Labor Standards Compliance Officer

- Secure applicable general wage determination
- Ensure all applicable wage rates & labor standard provisions are included in the bid specification and contract documents
- Monitor Contractor Compliance
- Verify that the Contractor and Subcontractor can be verified in the System for Award Management system (SAM) that they are not on the excluded/debarred parties list.

Filing System

- All land and/or easement acquisition documentation, if applicable.
- Preliminary design and cost estimates
- Wage determination
- Final design and cost estimates
- Construction bid package
- Approval of bid documents by authorities having jurisdiction over the project
- Proof of publication for bid advertising. This file may also include letters utilized to specifically solicit for minority/women contractor participation.
- Wage determination verification 10 days prior to bid opening
- Bid opening minutes and bid tabulations
- Verification of contractor and/or owner eligibility

Filing System

- Written recommendation for award of contract
- Executed construction contract(s). MUST include contracts with subcontractors.
- Pre-construction conference minutes or evidence of meeting with contractor
- Notification to the Department of contract award (LSE7 Notice of Award due within 10 days after award)
- Contractors/subcontractors weekly payrolls and evidence of review. Verification of posters at job site; submit a picture to the Department with the first payroll
- Other related correspondence

Wage Determinations

LABOR STANDARDS

Selecting Wage Determinations

- Wage Determinations: **4** Types
 - Building
 - Residential
 - Highway
 - Heavy
- Incorporated within the Bid Package when procuring for construction contractors
 - In effect 10 days or more before opening contractor bids

Wage Determination: **Highway**

Alteration or repair of roads, streets, highways, runways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

Wage Determination: **Residential**

Single family houses or apartment buildings of four stories or less

Wage Determination: **Building**

Sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies. This category includes all construction of such structures, the installation of equipment, as well as incidental grading and paving. Such structures need not be habitable to be building construction.


- Examples: auditoriums, city halls, apartment buildings (five stories and above), hospitals, office buildings, schools, warehouses, and shopping centers.




Wage Determination: **Heavy**

This is a catch-all category. It includes all other projects not classified as building, highway or residential (e.g., bridges over navigable waters, dams, dredging and irrigation projects, tunnels).


- Of the four categories of construction, this is the only type of construction that can be broken into subcategories such as water and sewer line projects and dredging projects.

Secure Wage Determination new website – after June 13, 2019 <https://beta.sam.gov/>



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New to beta.SAM.gov

Data Sets

Assistance Listings

Contract Opportunities

Contract Data

Entity Information

Federal Hierarchy

Wage Determinations

Resources

Policies

LEARNING CENTER

Wage Determinations

Wage Determinations Help

Labor Advisors

A wage determination is a listing of wage rates and fringe benefit rates for each labor category of workers which the U.S. Department of Labor has determined to be prevailing in a given area.


Wage determinations fall under two categories: Davis-Bacon Act (DBA) WDs and Service Contract Act (SCA) WDs. The DBA applies to contracts involving the construction, alteration, and/or repair (including painting or decorating) of public buildings or public works. These contracts must specify the minimum wages and fringe benefits to be paid to laborers and mechanics employed under the contract.

The Service Contract Act (SCA) applies to federal and District of Columbia contracts that provide services. It establishes standards for wage rates and safety and health protections for employees performing work on covered contracts.

You can find the applicable DBA and SCA wage determinations required for each contract action in SAM. Search by wage determination (WD) number, or use the filters to narrow down your results by geographic location.

Each wage determination reflects the current data provided by the Department of Labor. In the future, you will be able to sign up to follow wage determinations as they are updated.

Legacy website



[Public Quick Start Guide](#)

[Search Wage Determinations](#)

e98 Form

[e98\(request official SCA WD from DOL\)](#)

Applying Multiple Wage Determinations

- Only arises when a project includes construction items that *in and of themselves would be in a separate category of construction*
- In determining whether a construction item would be in and of itself a separate category of construction, the nature of the construction item/project itself is considered

Applying Multiple Wage Determinations

- Once it has been determined that a construction item is and of itself a separate category of construction, the next point to consider is whether the cost of the work involved is substantial.
- The cost is generally considered substantial if it exceeds 20% of the overall cost of the project or is over \$1 million.
- If there is a substantial amount of construction in a separate category, multiple wage determinations will be applicable.

Applying Multiple Wage Determinations

- If the cost is not substantial, it must then be determined whether the work is incidental in function to the overall project.
- If the construction that in and of itself is within a separate category *is not* substantial in cost and *is* incidental in function, one wage determination applies.
- If the construction is neither substantial in cost nor incidental in function (i.e., a small separate project included in the same contract for convenience), two wage determinations would still be issued.

After Procurement

LABOR STANDARDS

Verification of Contractor Eligibility

- **SAM (System for Award Management)**
 - www.sam.gov
- **Nebraska Contractor Registration Act**
 - All contractors doing business in Nebraska must register with the Nebraska Department of Labor.
 - A contractor is any person who engages in the business of construction and includes subcontractors, general contractors and any other person arranging for the performance of work on real property.
 - <http://dol.nebraska.gov/LaborStandards/Contractors>
 - General Phone #: 402.471.2239

Contract Award

- Verify Contractor Eligibility (SAM & NDOL)
- Award to Lowest Bidder
- Notice of Contract Award (LSE7)
- Pre-Construction Conference
- Additional Worker Classifications/Wage Rates
- Wage Rate Exceptions
- Notice to Proceed

Notice of Contract Award

FORM LSE 7

NOTICE OF CONTRACT AWARD / LSE 7

GENERAL CONTRACTOR AND SUBCONTRACTORS

LSE 7: Notice of Contract Award- this form must be completed within 10 days after contract award. The form must be filled out for the General Contractor & Sub-contractor(s) working on the CDBG awarded project.

1.	CDBG Grant Number	CDBG Grantee		CDBG Grantee County
2.	Fed Wage Determination #	Modification #	Published Date	Verification Date
3.	Bid Opening Date		SAM (Contractor Eligibility) Verified Date	
4.	Contract Award Date	Contract Amount		Estimated Contract Start Date
5.	Contractor Name & Address		Description of Work	
6.	Subcontractor	Brief Description of Work (i.e. electrician)		SAM Verified Date
7.	Labor Standards Designee	Address		Email / Phone
8.	Signature		Date Signed	

Individuals, who are hearing and/or speech impaired and have a TDD, may contact the department through the Statewide Relay System by calling (800) 833-7352 (TDD), or (800) 833-0902 (voice). The relay operator should be asked to call DED at (800) 426-6505, or (402) 471-3111.

Submit the LSE7 form to the Labor Standards Specialists: Rebecca Schademmann and Terry McAuliffe

Rebecca Schademmann, (402) 471-3172 or rebecca.schademmann@nebraska.gov
 Terry McAuliffe, (402) 471-3680 or Terry.McAuliffe@nebraska.gov

Nebraska Department of Economic Development
 301 Centennial Mall South
 Lincoln, NE 68509-4666

Davis-Bacon

- Requires payment of prevailing wage rates on all federal projects **over \$2,000**
- Construction includes alteration, and/or repair of public buildings or public works. (This also includes private buildings and facilities such as commercial property, downtown businesses privately owned)
- Responsibility of Principal Contractor
- Responsibility of Contract Administrator
- Posting Wage Determination

After Contract Award

- Submit completed Notice of Contract Award (LSE7) to DED labor standards specialist **within 10 days of award**
- Pre-Construction Conference
- Wage Classifications
- Additional Worker Classifications



Pre-Construction Conference

Grantee/Contractor Meeting

- Before Start of Construction
- Responsibilities under the Labor Standards Provision
- Grantee's Role in Monitoring Compliance
- Posters and Wage Determination to be displayed for the workers at the work site.

Additional Wage Determination

Add wage determination classifications after the contract has been awarded

- Letter from contractor stating what is paid hourly
- Description of work to be performed by employee
- Union vs. non-union

Additional Wage Classification

Add wage determination classifications after the contract has been awarded

- Documentation
- Project number and location

1. FROM (name and address of requesting agency) Nebraska Department of Economic Development PO Box 94666 301 Centennial Mall South Lincoln, NE 68509-4666		2. PROJECT NAME AND NUMBER Keith County – 06PW019	
		3. LOCATION OF PROJECT (City, County and State) Lemoyne, Keith County, Nebraska	
4. BRIEF DESCRIPTION OF PROJECT Rehabilitate the Senior Center		5. CHARACTER OF CONSTRUCTION <div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> Building <input type="checkbox"/> Heavy <input type="checkbox"/> Highway </div> <div> <input type="checkbox"/> Residential <input type="checkbox"/> Other (specify) <div style="border: 1px solid black; width: 50px; height: 20px; margin-top: 5px;"></div> </div> </div>	
6. WAGE DECISION NO. (include modification number, if any) NE070025 - Mod 1 - Dated 3/30/2007 <input checked="" type="checkbox"/> COPY ATTACHED		7. WAGE DECISION EFFECTIVE DATE 7/11/2007	
8.	WORK CLASSIFICATION(S)	HOURLY WAGE RATES	
		BASIC WAGE	FRINGE BENEFIT (\$ (if any))
	Roofer / Drywall Finisher	9.00	<div style="border: 1px solid black; width: 50px; height: 20px;"></div>
	Soft Floor Layer	11.00	<div style="border: 1px solid black; width: 50px; height: 20px;"></div>
	Drywall Rocker / Loader Backhoe-Rubber Tire	10.25	<div style="border: 1px solid black; width: 50px; height: 20px;"></div>
	Glazier / Electrician	10.00	<div style="border: 1px solid black; width: 50px; height: 20px;"></div>
	Truck Driver Single Axle / Truck Driver Tandem Axle	13.80	<div style="border: 1px solid black; width: 50px; height: 20px;"></div>

Notice to Proceed

- Issued by the Local Unit of Government to the Contractor, Construction Begins
- Cost Breakdown, contractor submits this within 10 days of the Notice to Proceed.
- Types of Workers
- Payroll Verification
- Jobsite Posters
- Interviews



Certified Payrolls

LABOR STANDARDS

Payroll and Basic Records

- Payrolls and related basic records shall be maintained by the contractor during the course of the work and for **three years** thereafter for all laborers and mechanics working at the site of the work.
- Such records shall contain the
 - **name**,
 - **address**, and
 - **Last 4 digits of social security number** of each such worker, his or her correct classification,
 - **hourly rates of wages paid** (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1 (b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. 29 CFR 5.5(a) (3)

Certified Payrolls

- The contractor shall submit weekly for any week in which any contract work is performed a copy of all payrolls.

29 C.F.R. § 5.5(a)(3)(ii)(A).

- Each weekly payroll submitted must be accompanied by a “Statement of Compliance.”

29 C.F.R. § 5.5(a)(3)(ii)(B).

Certified Payrolls

- Weekly payrolls must include specific information as required by 29 C.F.R. § 5.5(a)(3).
- Weekly payroll information may be submitted in any form desired.
 - Optional Form WH-347 is available for this purpose
 - The WH-347 form, with instructions, is at:

<http://www.dol.gov/whd/forms/wh347instr.htm>.

Certified Payrolls

- Weekly, the contractor must submit “a copy of all payrolls” to:
 - **Designated Individual identified by the local government. (Labor Compliance Officer)**

29 C.F.R. § 5.5(a)(3)(ii)(A).

“Statement of Compliance”

- The certification “Statement of Compliance” attached to each weekly payroll must be:
 - On page 2 of the WH-347 Form “Payroll (For Contractors Optional Use)”; or
 - On any form with identical wording.

“Statement of Compliance” Certification for weekly payrolls

- The properly signed “Statement of Compliance” submitted certifies that:
 - The payroll for the payroll period contains the information required to be provided;
 - The appropriate information is being maintained;
 - Such information is correct and complete;
 - Each laborer or mechanic has been paid the full weekly wages earned; and
 - Each laborer or mechanic has been paid not less than the applicable wages, as specified in the applicable wage determination incorporated into the contract.

“Statement of Compliance”

- Must be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. 29 C.F.R. § 3.3(b).
- Each weekly statement must be delivered or mailed by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative contracting for or financing the building or work. 29 C.F.R. § 3.4(a).
 - ***Nebraska CDBG Program: Must be provided to the local unit of government who contracted with the contractor.***

Availability of Certified Payroll

- The contractor or subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the contracting agency or the Department of Labor

Availability of Certified Payroll

- If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to suspend any further payment, advance, or guarantee of funds.
- Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12

Certified Payrolls & Signatures

- The signature on each weekly “Statement of Compliance” may be either an **original handwritten** or an electronic signature.
- A contracting agency or prime contractor may permit or require contractors to submit the weekly payrolls, each with the accompanying “Statement of Compliance” through an electronic system.

Certified Payrolls & Signatures

- Photocopies or “pdf” copies of the “Statement of Compliance,” faxed “Statements of Compliance,” or an electronically scanned “Statement of Compliance” e-mailed to an agency **do not satisfy the requirement** that each “Statement of Compliance” be:
 - “signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract.”

Certified Payrolls & Signatures

- The importance of the “Statement of Compliance” requirement is clear in that:
 - “The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.”

**29 C.F.R. § 5.5(a)(3)(ii)(D),
reiterated at FAR 48 C.F.R. § 52.222-8(b)(4)**



Types of Workers

LABOR STANDARDS

Types of Workers

- Laborer/Mechanic
 - Working foremen
 - Exclusions
- Apprentices/Trainees
- Sole Proprietors
- Independent Contractor (1099 workers)



Laborers and Mechanics

- Does not include:
 - Timekeepers, inspectors, architects, engineers; or
 - Bona fide executive, administrative, and professional employees as defined under FLSA.
- Working foremen are generally non-exempt:
 - must be paid the Davis Bacon (DB) rate for the classification of work performed if not 541 exempt.

Site of the Work

- Davis-Bacon applies only to laborers and mechanics employed “directly on the site of the work.”
- A three-part definition applies to determine the scope of the term “site of the work.”

1. Site of the Work Definition

- DBA applies only to workers “directly on the site of the work:”
 - The physical place or places where the construction called for in the contract will remain after work has been completed; and
 - Any other site where a **significant** portion of the building or work is constructed, *provided that* such site is established specifically for the contract.

2. Site of the Work Definition

- “Site of the work” also includes job headquarters, tool yards, batch plants, borrow pits, etc., *provided* they are:
 - Located adjacent or virtually adjacent to the “site of the work” described in paragraph 1; and
 - Dedicated exclusively or nearly so to the performance of the contract or project.
 - Except if they are excluded – see next slide

3. Site of the Work Definition

- “Site of the work” does not include a contractor’s or subcontractor’s:
 - permanent home office, branch locations, fabrication plants, tool yards, etc.;
 - whose location and continuance in operation are determined without regard to a particular covered project.

3. Definition (Cont'd.)

- Also not included in the “site of the work” are:
 - Fabrication plants, batch plants, job headquarters, tool yards, etc., of a commercial supplier established by a supplier of materials:
 - Before the opening of bids for a project; and
 - Not located on the actual site of the work.
 - Such permanent, previously established facilities, are not part of the “site of the work,” even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

Truck Drivers

- Truck drivers of the contractor or subcontractor are covered by Davis-Bacon for time:
 - Spent working on the “site of the work;” and/or
 - Spent loading or unloading materials and supplies on the “site of the work,” if such time is more than *de minimis*.

(Slides coming up discuss material suppliers.)

Truck Drivers

- Truck drivers are also covered when:
 - Transporting materials and supplies between a facility that is part of the “site of the work” and the actual construction site; or
 - Transporting portions of a building or work between a site where a significant portion of the project is being constructed and the physical place where the building or work will remain.

Truck Drivers Owner-Operators

- DOL has an enforcement position with respect to *bona fide* owner-operators of trucks who are independent contractors (an owner-operator is a person who owns and drives a truck). Certified payrolls including the names of such owner-operators do not need to show the hours worked or the rates paid, only the notation “owner-operator.”
- This position **does not apply** to owner-operators of other equipment such as bulldozers, cranes, etc.

Material Suppliers

- The manufacture and delivery to the work site of supply items such as sand, gravel, and ready-mixed concrete by bona fide material suppliers, are activities **not** covered by DBA/DBRA requirements (even though the materials are delivered directly into a contractor's work site mixing facilities).
- Bona fide material suppliers (including truck drivers) whose only contractual obligations for on-site work are to deliver materials and/or pick up materials are not considered contractors under the DBA/DBRA. Thus, their employees are not subject to the Davis-Bacon labor standards.

Material Suppliers (cont'd.)

- However, laborers and mechanics employed at the site of the work by a material supplier, manufacturer, or carrier that undertakes to perform a part of a construction contract as a subcontractor:
 - Would be subject to Davis-Bacon labor standards in the same manner as those employed by any other contractor or subcontractor.
 - For enforcement purposes, if such a worker spends more than an incidental amount **(20%)** of his/her time in a workweek engaged in construction work on the site, he/she is covered for all time spent on the site during workweek.

Wages & Fringe Benefits

- All laborers and mechanics employed or working upon the site of work must be paid at least the applicable prevailing wage rate for the classification of work performed, without regard to skill.

Wages & Fringe Benefits

- Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed." 29 CFR 5.5(a)(1)

Wages & Fringe Benefits

- DBA: the terms “wages” and “prevailing wages” include:
 - Basic hourly rate
 - Contractor contributions *irrevocably* made to a trustee or third party pursuant to a bona fide fringe benefit fund, plan, or program; and/or
 - The rate of costs the contractor reasonably anticipates in providing bona fide fringe benefit where certain conditions are met.
 - Types of Fringe
 - Life Insurance
 - Health Insurance
 - Pension
 - Vacation, Holiday, and Sick Leave

Wage & Fringe Benefits

- Under DBA, Fringe Benefits are a component of the DBA “prevailing wage.”
- The prevailing wage obligation may be satisfied by:
 - Paying the basic hourly rate and fringe benefit in cash (including negotiable instruments payable on demand);
 - Contributing payments to a bona fide plan; or
 - Any combination of the two.

Wages & Fringe Benefits

- Must be paid weekly for all hours worked:
 - Unless the fringe benefits are paid into a bona fide fringe benefit plan and then contributions must be paid no less often than quarterly.
- Cash wages paid in excess of basic hourly rate may count to offset or satisfy the fringe benefit obligation.

Prevailing Wage Example

Basic Hourly Rate	\$14.00
Fringe Benefit	\$ 1.00
Total prevailing wage	\$15.00

- The contractor may comply by paying:
 - \$15.00 in cash wages
 - \$14.00 in cash wages plus \$1.00 for fringe
 - \$12.00 in cash wages plus \$3.00 for fringe

Computing the Hourly Equivalent Fringe Benefit – Example

- Employer provides medical insurance at \$200 per month to an electrician on a Davis-Bacon project. The Wage Determination requires \$16.00 plus \$2.50 in fringe benefits, or \$18.50 an hour. Employee works 160 hours a month
 - $\$200 / 160 \text{ hours} = \1.25 credit per hour for the fringe benefit
 - No other benefit provided
 - Electrician is due: \$17.25 in cash wages per hour

\$17.25 in cash wages plus \$1.25 for fringe benefit = **\$18.50**

Prevailing Wage Example

Basic Regular Rate

- An employee spent 32 hours working as an electrician, with a basic hourly rate of \$22.00 and an fringe benefit of \$3.00, and 8 hours working as a laborer, with a basic hourly rate of \$14.00 and a fringe benefit of \$1.00.
- The employee is due \$800.00 for his electrician work (32 hours X (\$22.00 + \$3.00)) and \$120.00 for his laborer work (8 hours X (\$14.00 + \$1.00)), for a total of \$920.00.

Classification	Basic hourly rate	Fringe Benefit	Total	Hours	Amount Paid
Electrician	\$22	\$3	\$25	32	\$800
Laborer	\$14	\$1	\$15	8	\$120
				Total	\$920

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Application of CWHSSA

- CWHSSA requires the payment of time and one-half the “basic rate” of pay for all hours worked in excess of 40 hours in a week.
 - The basic rate of pay under CWHSSA is the straight time hourly rate, which will generally be the amount listed under the column “Rates” on the applicable wage determination.
 - The “basic rate” cannot be less than the basic hourly rate required in an applicable wage determination, not including any required fringe benefit amount. See 29 C.F.R. § 5.24.
 - **However, if an employee is paid a regular rate above the basic hourly rate (excluding fringe benefits or cash payments in lieu of fringe benefits), that regular rate will be considered the basic rate.**

Overtime Pay Computations on DBA/DBRA contracts

- The next three slides provide examples that reflect correct computations under CWHSSA for an employee who worked 44 hours on a covered DBA/DBRA contract as an electrician, where the wage determination rate for an electrician is
- \$22.00 (basic hourly rate) **plus**
- \$5.00 in fringe benefits.

Wage Determination – Electrician	
Basic Hourly Rate	\$22
Fringe Benefit	\$5

Overtime Pay Computations – DBA/DBRA Example 1

Wage Determination – Electrician		Actual
Basic Hourly Rate	\$22	\$22
Fringe Benefit	\$5	\$5

- If the employer paid **\$22.00** in cash wages and paid **\$5.00** in fringe benefits, the electrician would receive:

ST 44 hours x \$22.00 = \$ 968.00 for cash wages

ST 44 hours x \$ 5.00 = \$ 220.00 in fringe benefits

OT 4 hours x $\frac{1}{2}$ x \$22.00 = \$ 44.00 for CWHSSA earnings

\$1,232.00

Overtime Pay Computations – DBA/DBRA Example 2

Wage Determination – Electrician		Actual
Basic Hourly Rate	\$22	\$20
Fringe Benefit	\$5	\$7

- If the employer paid **\$20.00** in cash wages and **\$7.00** in fringe benefits:
ST 44 hours x \$20.00 = \$ 880.00 for cash wages
ST 44 hours x \$ 7.00 = \$ 308.00 in fringe benefits
OT 4 hours x $\frac{1}{2}$ x \$22.00 = \$ 44.00 in CWHSSA earnings
\$1232.00

Overtime Pay Computations – DBA/DBRA Example 3

Wage Determination – Electrician		Actual
Basic Hourly Rate	\$22	\$24
Fringe Benefit	\$5	\$3
Total	\$27	\$27

- If the employer paid \$24.00 in cash wages and \$3.00 in fringe benefits:

ST 44 hours x \$22.00 = \$ 968.00 for cash wages

ST 44 hours x \$ 2.00 = \$ 88.00 cash in lieu of fringes

ST 44 hours x \$ 3.00 = \$ 132.00 in fringe benefits

OT 4 hours x $\frac{1}{2}$ x \$22.00 = \$ 44.00 in CWHSSA earnings
\$ 1232.00

Overtime Pay Computations – DBA/DBRA Example 4

Wage Determination – Electrician		Actual
Basic Hourly Rate	\$22	\$25
Fringe Benefit	\$5	\$5
Total	\$27	\$30

- If the employer paid \$25.00 in cash wages and \$5.00 in fringe benefits:

ST 44 hours x \$25.00 = \$ 1100.00 for cash wages

ST 44 hours x \$ 5.00 = \$ 220.00 in fringe benefits

OT 4 hours x $\frac{1}{2}$ x \$25.00 = \$ 50.00 in CWHSSA earnings

\$ 1370.00

Deductions

- 29 CFR 3.5 lists deductions that an employer can make from the prevailing wage rate.
- **Examples:** Social Security and federal or state taxes, certain court-ordered payments, bona fide pre-payments of wages, certain payments of union dues, and voluntary charitable donations.

Deductions

- 29 CFR 3.6 generally provides that other deductions may be allowed whenever all of the following conditions are met:
 - The contractor does not profit directly or indirectly from the deduction
 - The deduction is not otherwise prohibited by law
 - Either the employee voluntarily consented to the deduction in writing in advance of the time that the work was performed or the deduction is under the terms of a collective bargaining agreement
 - The deduction serves the convenience and interest of the employee

Payroll Verification

- “No Work” Payrolls
- Payroll Review and Submission
- Payroll Retention – 3 years
- Payroll Submittals **must** contain original signatures
- Clean copy – no cross outs, no typos

Payroll Verification

- Fringe Benefits
- Overtime
- Deductions
- Proper designation/trade
- Split classification
- Site of Work



Payroll

Payroll Reporting

- Payroll Form
- Restitution for Underpayment of Wages
- Correction Payrolls
- Payroll submittal weekly to Local Labor Standards Compliance Officer **MUST be Originals**
- Final Wage Compliance Report



Payroll Review

- Wage Determination
- Payroll Form (WH347)
- Review all payrolls
- Verify wages being paid
- Verify overtime rate
- Verify classification



On-Site Visits/Interviews

- Recommend 3 visits during the duration of the project.
- Employee Interviews are **REQUIRED**
 - Keep in file
 - English and Spanish versions
 - Attach interviews to the respective payrolls.
 - Must be signed and dated by the Labor Standards Compliance Officer.
 - Utilize HUD-11, Record of Employee Interview Form
 - Compare Interview information to the Payroll Information

Job Site Posters

- Retain a photograph of the posters at the job site.
 - The picture should be date stamped and signed.
 - The picture should also clearly show all of the required posters
- Posters must be viewable to all workers and protected from weather.
- Wage Determination & all additional wage classification must be posted at the worksite and accessible to all employees.



Payment Procedure Documents

- Change Orders
- Final Wage Report

File System

- Bid Package/Final Contract
- Written evaluation criteria for judging
- Contractor clearance obtained
- Current wage determination
- Notice of Contract Award (LSE7)
- Employee Interview(s)
- Evidence of Inspection of Job Site for Posters

File System

- Weekly statements from contractor(s) for correct wage/classification/etc.
- Inspection reports

Documents Commonly Missing

- Inspection Reports
- Documentation to support evidence of posters displayed
- Additional Wage Classification(s)
- Missing Weekly Statement from Contractor(s)
- Excluded Parties documentation (Sam.gov)

Common Mistakes Encountered

- Incorrect Wage Classification
- Wage Classification of “Apprentice”
- High Ratio of “Laborers” vs. Other Classifications
- Contractor(s) Not Verified Before Awarded

Top Labor Standards Issues

- Incorrect Work Classification Used
- Work Classification Not Listed on Wage Determination
- Payrolls Completed in Pencil
- Project # Not Written on Payroll Report

Top Labor Standards Issues

- Incorrect Pay Rate
- Incorrect Calculations
- Request for Additional Work Classifications Submitted Incorrectly
- “Other” Deductions



Review

- Procurement
- Noncompetitive Negotiation
- City Engineer for CDBG Project
- Area Wage Determination
- Additional Job Classification
- Verify Wage Determination
- Payroll Records